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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/445,043 03/20/00 BAIRD-SMITH

I 350013-65

EXAMINER

QM32/0228

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ART UNIT

PAPER NUMBER

3727  
DATE MAILED:

02/28/01

*J*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No. 09/445,043	Appl. Unit(s) Baird-smith et al.
Examiner Robin A. Hylton	Group Art Unit 3727

Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-21 is/are pending in the application.

Of the above, claim(s) 19-21 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-18 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on Mar 20, 2000 is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-13 and 114-18, drawn to a container and closure assembly and a method of forming the container assembly.

Group II, claim(s) 19-21, drawn to a method of packaging a food product.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the method claims of Group II require placing a food product in the container prior to sealing and heating the container assembly and food therein while the claims of Group I do not require these steps.

3. During a telephone conversation with Guy P. Smith on February 21, 2001 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of

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inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

***Drawings***

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "27" has been used to designate both the container assembly in figure 1 and the can end closure in figure 2. Correction is required.

***Specification***

6. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

8. The disclosure is objected to because of the following informalities: on page 11, lines 20-21, "threads 19 of 30 the closure" should read -- threads 19 of the can --. Appropriate correction is required.

9. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: laminar member (of claims 5-7), the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible member towards the laminar member (of claim 7), the rigid cap supporting the body of the can in an radial direction (of claim 13).

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most

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nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because it fails to provide an adequate written description of the invention and/or fails to adequately teach how to make and/or use the invention, i.e., failing to provide an enabling disclosure. Paragraphs 2 and 3 of page 11 are confusing. Paragraph 2 appears to set forth the food is placed into a container having a closed end. In paragraph 3, lines 1-3, the cap is screwed onto the container prior to placing the food into the can. When is the food placed into the can? What is the state of manufacture of the can at that time?

***Claim Rejections - 35 USC § 112***

11. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is meant by “extension of the flexible member towards the laminar member”.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-7,9,10,12-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiroshi (JP Abstract 06219464). As best claim 7 is understood in view of the rejection(s) under 35 USC 112 above, Hiroshi anticipates the claim. The material of the container is set forth in the drawing figure as the same material as the plastic membrane.

14. Claims 1-3,5,6,9,12-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Owen et al. (US 3,833,142).

15. Claims 1-7,9-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shull (US 4,531,649). As best claim 7 is understood in view of the rejection(s) under 35 USC 112 above, Shull anticipates the claim. With regard to claim 11, the unsecured end of the membrane functions as a pull tab and is hingedly attached to the membrane radially beyond the end of the container neck.

16. Claims 1-3,5,6,9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Revill (GB 2,123,392).

#### ***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi. Hiroshi discloses the claimed invention except is silent regarding the material of the seal member 6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the resilient seal member of a foamed material, since it has been held to be within the general skill of a worker in the art to select a known

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material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

19. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi in view of Hardt (US 4,328,905). Hiroshi discloses the claimed container assembly except for a pull tab on hingedly attached to the membrane. Hardt discloses a membrane closure for a container having a hingedly attached pull tab for easy removal of the membrane from the sealed container. It would have been obvious to one of ordinary skill in the art to modify the container assembly of Hiroshi in view of Hardt to provide a pull tab hingedly attached to the membrane for grasping and easy removal of the membranae from a sealed container neck.

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Various inner and outer closures for containers are cited of interest.

21. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah  
February 22, 2001



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